IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

Crl.Rev.Pet.No. 822 of 1999()

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CC.399/1994 of JUDL.MAGISTRATE OF FIRST CLASS-II, KANJIRAPPALLY

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REVN. PETITIONER:

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SUNIL KUMAR, S/O.GOPALAKRISHNAN NAIR,
LAKSHMI SADANAM, ALAPRA, MANIMALA

BY ADV. SRI.K.JAGADEESCHANDRAN NAIR

RESPONDENTS:

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1. MELATTU SIVAN NAIR, S/O.PADMANABHAN,
   MELATTAYAPADMA VILASAM VEEDU,
   ALAPPRA KARA,
   MANIMALA VILLAGE.

2. RAJAN @ NELLITHANATHU RAJAN,
   NELLITHANATHU VEEDU,ALAPPRA KARA,
   MANIMALA VILLAGE.

3. K.R.SATHEESAN, S/O.RAMAN NAIR,
   VELUTHEDATHU VEEDU, ALAPPRA KARA,
   MANIMALA VILLAGE.

4. RAGHAVAN NAIR, PUTHUPARAMBIL VEEDU,
   MELEKAVALA BHAGOM, ALAPPRA KARA,
   MANIMALA VILLAGE.

5. K.N.RAMAKRISHNAN PILLAI @ UNNITHAN,
   KURIYANNOORMADATHIL VEEDU, ALAPPRA KARA,
   MANIMALA VILLAGE.

6. SUKUMARAN NAIR, S/O.RAMAKRISHNAN PANICKER,
   KARIMBIL VEEDU, ALAPPRA KARA,
   MANIMALA VILLAGE.

7. RAMAN PILLAI, S/O.GOPALAN, PARAPPALLIL VEEDU,
   ALAPPRA KARA,
   MANIMALA VILLAGE.

8. JANARDHANAN NAIR, S/O.NARAYANAN NAIR,
   M.S.SADANAM, ALAPPRA KARA,
   MANIMALA VILLAGE.

9. STATE OF KERALA, REPRESENTED BY SUB INSPECTOR OF POLICE,
   MANIMALA POLICE STATION, REPRESENTED BY THE STATE
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.M.N.SUKUMARAN NAYAR(SR.)
PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 22/08/2007, ALONG WITH CRA NO. 921 OF 2001 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**K.R.UDAYABHANU, J.**

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Crl.R.P.No.822/1999 & Crl.A.No.921/2001

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Dated this the 22nd day of August, 2007

**O R D E R**

Crl.R.P.No.822/1999 is filed by the de facto complainant in C.C.NO.399/1994 in the court of Judicial Magistrate of the First Class, Kanjirappally and Crl.A.No.921/2001 is filed by the State with respect to the acquittal of the accused. The case has been charge sheeted for the offences under Sections 143, 147, 148, 324 read with Section 149 of the Indian Penal Code.

2. The prosecution case is that on 29/03/1994, at about 8.30 p.m., the accused, eight in number, on account of previous enmity towards PW.2 with the common object of voluntarily causing hurt to him, formed into an unlawful assembly and armed themselves with deadly weapons such as fire wood, scissors and voluntarily caused hurt to CWs.1 to 3, i.e.; PWs.1 to 3, beating them with fire wood and inflicting injuries with scissors. The evidence adduced in the matter consisted of the testimony of PWs.1 to 9, Exts.P1 to P8, MOs.1 to 10 series. The

defence got marked Exts.D1 to D6. It is seen that PW.4 the occurrence witness examined turned hostile. The occurrence witnesses who supported the prosecution are PWs.1 to 3 and 6, who include PW.2, the de facto complainant and PW.1 his son and PW.3 the nephew of PW.2 and PW.6 a relative of PWs.1 to 3. A counter case was also registered by the police against PWs.1 to 3 and others, which was subsequently referred. A private complaint was filed which was taken cognizance in C.C.No.1058/1994. Both the cases were tried simultaneously and the accused in both the cases were acquitted.

3. It is seen from the evidence of the witnesses that the incident has taken place in the path way leading to Alappra Annapoorna U.P.School on the Southern side of the N.S.S Karayogam building. The accused are the office bearers of the N.S.S Karayogam and the de facto complainant and others are the former office bearers of the N.S.S Karayogam. PW.2 is the Manager of Alappra Annapoorna U.P.School and PW.1 is the teacher in the above school. The dispute is with respect to a

path way in O.S.No.416/1993 is filed by PW.2 before the Munsiff Court, Kanjirappally, in order to restrain the N.S.S Karayogam from obstructing the way to school. I.A.No.2095/1993 filed by PW.2 for an interim injunction was dismissed by a conceded order on 29/03/1994. Ext.D3 is the certified copy of the above order. It is on the same day in the night that the incident has taken place. It has been brought out that on the particular date, the accused and others were constructing a mud wall across the disputed pathway on the strength of Ext.D3 order and the de facto complainant and others were allegedly proceeding to the school through the pathway and there was an altercation and scuffle.

4. The trial court has noted that the weapons allegedly used were not recovered and further, no reasons were mentioned by the prosecution for the non recovery of the same. It is the defence case that in the scuffle, people fell on the rubbles and other materials in the karayogam compound kept for the construction of the mud wall and the same is the cause for the

injuries sustained. The court below has also observed that PWs.1 to 3 along with others proceeded to that spot on getting information that the Karayogam people were doing some work in the pathway to obstruct their way to the school. It was also found that a number of people had assembled in the spot and the incident had taken place at 8.30 p.m. and hence, it would not be possible to identify the persons who allegedly inflicted injuries. Hence, it was found that the involvement of the accused and their overt acts were not proved beyond reasonable doubt as no independent witnesses were examined.

In the circumstances, I find no reason to interfere with the findings of the court below in exercise of the appellate jurisdiction over acquittal. Criminal revision petition as well as the criminal appeal are dismissed.

**K.R.UDAYABHANU,**
**Judge**

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**K.R.UDAYABHANU, J.**

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Crl.R.P.No.822/1999
& Crl.A.No.921/2001

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**O R D E R**

22nd August, 2007